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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010-426**

12 **THOMAS BASARICH**  
13 **33860 Summit View Place**  
14 **Temecula, CA 92592**

**ACCUSATION**

15 **Registered License No. RN 672326**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
22 of Consumer Affairs.

23 2. On or about January 24, 2006, the Board of Registered Nursing issued Registered  
24 License Number RN 672326 to Thomas Basarich (Respondent). The Registered License was in  
25 full force and effect at all times relevant to the charges brought herein and will expire on  
26 August 31, 2011, unless renewed.

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1 JURISDICTION

2 3. This Accusation is brought before the Board of Registered Nursing (Board),  
3 Department of Consumer Affairs, under the authority of the following laws. All section  
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,  
6 that the Board may discipline any licensee, including a licensee holding a temporary or an  
7 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the  
8 Nursing Practice Act.

9 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license  
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
11 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the  
12 Code, the Board may renew an expired license at any time within eight years after the expiration.

13 STATUTORY PROVISIONS

14 6. Section 482 of the Code states:

15 "Each board under the provisions of this code shall develop criteria to evaluate the  
16 rehabilitation of a person when:

17 "....

18 "(b) Considering suspension or revocation of a license under Section 490.

19 "Each board shall take into account all competent evidence of rehabilitation furnished by  
20 the applicant or licensee."

21 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
22 revoke a license on the ground that the licensee has been convicted of a crime substantially  
23 related to the qualifications, functions, or duties of the business or profession for which the  
24 license was issued.

25 8. Section 493 of the Code states:

26 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
27 the department pursuant to law to deny an application for a license or to suspend or revoke a  
28 license or otherwise take disciplinary action against a person who holds a license, upon the

1 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
2 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
3 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
4 and the board may inquire into the circumstances surrounding the commission of the crime in  
5 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
6 qualifications, functions, and duties of the licensee in question.

7 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
8 'registration.'"

9 9. Section 2761 of the Code states:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an  
11 application for a certificate or license for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to the following:

13 " . . . .

14 "(d) Conviction of a felony or of any offense substantially related to the qualifications,  
15 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
16 conclusive evidence thereof."

17 10. Section 2762 of the Code states:

18 "In addition to other acts constituting unprofessional conduct within the meaning of this  
19 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
20 chapter to do any of the following:

21 " . . . .

22 "(b) Use . . . . alcoholic beverages, to an extent or in a manner dangerous or injurious to  
23 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
24 ability to conduct with safety to the public the practice authorized by his or her license.

25 "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
26 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
27 or the possession of, or falsification of a record pertaining to, the substances described in  
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subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

### REGULATIONS

11. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

12. California Code of Regulations, title 16, section 1445 provides:

"....

"(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

"(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

"(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

"(6) Evidence, if any, of rehabilitation submitted by the licensee."

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1 COST RECOVERY

2 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 FIRST CAUSE FOR DISCIPLINE

7 (February 10, 2009, Conviction of an Alcohol-Related Crime on July 16, 2008)

8 14. Respondent is subject to disciplinary action under Code sections 490 and 2761(f), in  
9 that Respondent was convicted of a crime that is substantially related to the qualifications,  
10 functions and duties of a registered nurse. On or about February 10, 2009, in the Superior Court  
11 of California, County of Orange, in the case entitled *The People of the State of California v.*  
12 *Thomas Basarich* (Superior Court, County of Orange, West Justice Center, Case No.  
13 08WM10013), Respondent was convicted by the Court by his plea of guilty to violating Vehicle  
14 Code section 23152(b), driving with a blood/alcohol content greater than 0.08%, a misdemeanor.

15 15. The facts that led to the conviction were that on or about the evening of July 16,  
16 2008, a Santa Ana California Highway Patrol (CHP) Officer was on routine patrol and noticed  
17 that Respondent was driving over 90 mph and crossed solid double yellow lines. The CHP  
18 Officer pulled over Respondent and noticed a very strong and distinct odor of an alcoholic  
19 beverage coming from the inside of the vehicle. Respondent admitted to the CHP Officer, upon  
20 questioning, that he had been drinking that evening. Respondent was transported to the Orange  
21 County Jail and he agreed to a blood test. The blood test revealed that Respondent's blood  
22 alcohol content was .15% by weight.

23 16. As a result of the conviction, Respondent was placed on 3 years informal probation  
24 with terms and conditions, including serve 1 day in Orange County Jail, attend and complete a 3  
25 month Level 1 First Offender Alcohol Program, report to an alcohol liaison and pay various fines  
26 and fees.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Using Alcohol to an Extent Dangerous to Self and Others)**

3 17. Respondent is subject to disciplinary action under Code section 2762(b), in that  
4 Respondent used alcohol to an extent dangerous to himself and others as is detailed in paragraph  
5 15 above, which is incorporated herein by this reference.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Criminal Conviction Involving the Consumption of Alcohol)**

8 18. Respondent's license is subject to discipline under Code section 2762(c), in that  
9 Respondent was convicted of a criminal offense involving the consumption or self-administration  
10 of alcohol as is detailed in paragraphs 14-16 above, which are incorporated herein by this  
11 reference.

12 **DISCIPLINE CONSIDERATIONS**

13 19. To determine the degree of discipline, if any, to be imposed on Respondent,  
14 Complainant alleges the following based on Respondent's report of prior convictions to the Board  
15 in a letter dated September 20, 2005:

16 a. On or about 1988 or 1989, in a prior criminal proceeding in Stillwater, Oklahoma,  
17 Respondent was convicted of a misdemeanor for driving under the influence of alcohol.  
18 Respondent was at a football game in a parking lot and was charged with intent to drive because  
19 he had the keys in his pocket and he was inside his vehicle, intoxicated and sleeping.

20 b. On or about February 1993, Respondent reports that he had a possible misdemeanor  
21 of driving while impaired in Denver Colorado. Respondent admitted to drinking while driving  
22 and a breathalyzer test proved impairment.

23 c. On or about May 1997, Respondent was charged with a misdemeanor, third degree  
24 assault and entered a plea to a lesser charge. This case was dismissed on December 14, 1998.  
25 Respondent attended a class on anger management.

26 d. On or about December 1999, in a prior criminal proceeding entitled *The People of the*  
27 *State of Colorado v. Thomas Basarich*, in Colorado Superior Court, Case Number 97M676  
28

Respondent was convicted of misdemeanor assault (domestic violence) and as a condition of sentencing was ordered to attend alcohol abuse and anger management classes.

PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered License Number RN 672326, issued to Thomas Basarich;
2. Ordering Thomas Basarich to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/15/10

*for* Stacie Benin  
LOUISE R. BAILEY, M.Ed., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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